



California Fair Political Practices Commission

July 20, 1989

Fred Huebscher
1523 No. Vista Street
Los Angeles, CA 90046

Re: Your Request for Advice
Our File No. A-89-275

Dear Mr. Huebscher:

This is in response to your request for advice regarding the duties under the Political Reform Act (the "Act")¹ of two slate mailer organizations for which you are treasurer. Your request was set forth in two separate letters dated, respectively, May 3, 1989 and May 5, 1989. This letter replies to the questions posed in both letters.

On June 2, 1989, I informed you by telephone of our analysis of questions 1 through 4 herein so that you would be aware of the Act's provisions prior to the June 6, 1989 Los Angeles city elections.

Also, on June 5, 1989 the Commission received a letter from Charles H. Bell (copy enclosed) which lodges a formal complaint against you and these slate mailer organizations. The facts alleged in the complaint differ slightly, but significantly, from those set forth in your letters. The advice below is based solely upon the facts set forth in your letters. We offer no comment at this time on the facts alleged in Mr. Bell's letter. Mr. Bell's letter is under review by our Enforcement Division.

QUESTIONS

1. Is a mailer that includes reference to no more than three candidates and no ballot measures a slate mailer under the Act?

¹ Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

2. Is it significant to the question above that the mailer is sent by a slate mailer organization as defined by the Act?

3. Must mailings such as those described above include a slate mailer identification and disclaimer as required by Section 84305.5?

4. Must the organizations which send mailers such as those described above file a Form 401 showing payments received and made toward the production of these mailers for the June 6, 1989 Los Angeles city election?

5. If a slate mailer sent by a slate mailer organization endorses some legislative candidates who did not request the endorsement or contribute to its cost, is this an independent expenditure made on behalf of those candidates?

6. Is a slate mailer organization required to send the independent expenditure notice required by Section 85600 if it makes the endorsements described in Question 5 above?

CONCLUSIONS

1. A mailer that includes reference to no more than three candidates and no ballot measures is not a slate mailer under the Act. However, depending on the nature of the entity sending the mailer, the mailer may be a contribution or another type of expenditure subject to the Act.

2. The fact that the mailer described in Question 1 above is sent by a slate mailer organization does not alter our advice that the mailer is not a slate mailer.

3. Since the mailer described in Question 1 above is not a slate mailer, it need not include the information required by Section 84305.5.

4. Organizations which send the type of mailer described in Question 1 above are not required to complete a Form 401. However, depending on the nature of these entities and the cost of the mailer, other reporting requirements of the Act may apply.

5. When a slate mailer sent by a slate mailer organization endorses a legislative candidate who neither requested the endorsement nor contributed to its cost, the slate mailer organization has not made an independent expenditure under the Act.

6. Since the slate mailer described in Question 5 above is not an independent expenditure, the slate mailer organization is not required to send the notice required by Section 85600.

FACTS

You are the treasurer for two slate mailer organizations: Los Angeles Democratic Counsel, ID# 889012 and Los Angeles Taxpayers Alliance, ID# 899000.

These organizations produced mailers for the Los Angeles city elections held on June 6, 1989. As set forth in your request for advice, the mailers did not include reference to more than three candidates or any ballot measures.²

In addition, these organizations intend to produce slate mailers for the June 1990 election. These mailers more than likely will support candidates for the legislature, some of whom will neither request nor pay for such support.

ANALYSIS

Section 82048.3 defines "slate mailer" as a "mass mailing which supports or opposes a total of four or more candidates or ballot measures." (Emphasis added.) Since, based upon the facts provided, the mailers for the Los Angeles city elections on June 6, 1989 included reference to no more than three candidates and no ballot measures they do not meet the definition of "slate mailer" in Section 82048.3.

As a consequence, these mailers were not subject to the requirements for slate mailers set forth in Section 84305.5 and payments received and made toward the production of the mailers need not be reported on Form 401. The fact that these mailers were sent by slate mailer organizations does not alter this analysis.

However, you should note that merely because these mailers were not slate mailers, the organizations sending them are not necessarily exempt from the normal reporting requirements and contribution limitations of the Act. For example, if the mailers were sent by these organizations at the behest of the candidates endorsed, without receipt of adequate consideration from the endorsed candidates, they would be contributions under the Act. (See Sections 82015 and 82025.) Depending on the cost of the mailers, the expenditures to produce and mail them would probably be reportable under the Act. (See Sections 84100-84226.) Also,

² The complaint filed by Mr. Bell indicates that the mailers contained reference to four candidates. The advice in this letter is based solely on the facts provided in your letter. This letter provides you with a defense in a future enforcement action brought by the Commission only to the extent that you have provided us with all material facts. (Section 83114(b).) The Commission does not act as a factfinder in its advice-giving role. (In re Oglesby (1975) 1 FPPC Ops. 71, 77n.6.)

they would be subject to the contribution limitations of the Act.
(See Sections 85301, 85302, 85303 and 85305.)

Finally, you ask whether slate mailers which endorse some candidates who have neither requested the endorsement nor contributed to the mailer's cost are independent expenditures under the Act.

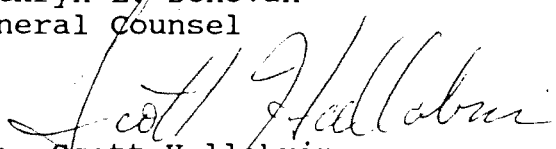
The Commission has concluded that expenses incurred by slate mailer organizations in connection with including nonpaying candidates in the slate mailer are not independent expenditures for purposes of the Act. This is because, in producing a slate mailer, the organization acts primarily for business purposes rather than political purposes. (See Propper Advice Letter, No. I-86-268, copy enclosed.)

Section 85600 requires that independent expenditures for mass mailings which support or oppose a legislative candidate state in a specified manner that the mailing is not authorized by any candidate or election official. Since the endorsements discussed above do not qualify as independent expenditures, these organizations would not be required to comply with Section 85600 when making the slate mailers that contain the endorsements.

Please contact me at (916) 322-5901 if you have any questions regarding this matter.

Sincerely,

Kathryn E. Donovan
General Counsel


By: Scott Hallabrin
Counsel, Legal Division

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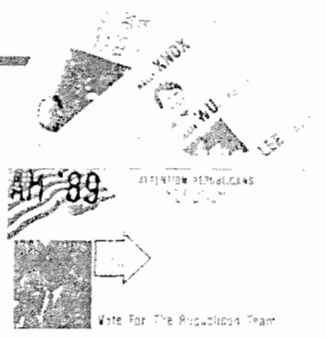
Enclosures

The Political Scientists

Specialists in Direct Mail Targeting and Designs

May 3, 1989 F P P

MAY 8 10 25 AM '89



Mr. Bruce Brobeck
Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, CA 95814

Dear Bruce,

I am writing to confirm our discussion of April 26, 1989 regarding the two State Mailer Organizations that I am the Treasurer of. These two organizations, Los Angeles Democratic Council, ID #889012 and Los Angeles Taxpayers For

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* The original letters from Mr Huebscher were taken for evidence to be used in an enforcement hearing, case no. 89-218.
Elizabeth Stein

Advice 89-275

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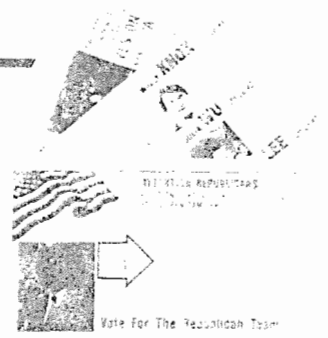
only include three candidates, the organizations are not required to put a "State Mailer Identification and Disclaimer" (as outlined in Government Code Section 84305.5) on the mailers. Thank you for your help in this matter.

Yours truly,
Fred Huebscher
Fred Huebscher

The Political Scientists

Specialists in Direct Mail Targeting and Designs

May 5, 1989



Fair Political Practices Commission
428 J Street, 8TH Floor
Sacramento, CA 95814

Dear Sir,

I would like to request written advice from the Commission (FPPC) on the following matter as per Government Code Section 83114(6).

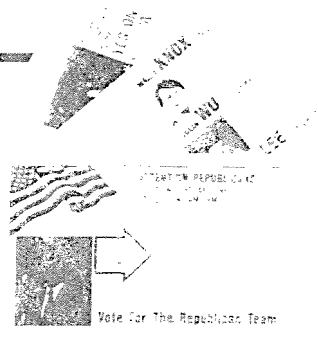
I am the Treasurer of two State Mailer organizations: Los Angeles Democratic Council, ID# 889012 and Los Angeles Taxpayers Alliance, ID# 899000. These organizations are producing mailers for the upcoming L.A. City elections on June 6, 1989; the mailers will support no more than three candidates and no ballot measures. Consequently, these mailers are not "State Mailers" as defined by Government Code Section 82048.3.

I need to know if these organizations are required to file Form 401's showing payments received and payments made toward the production of these mailers (which are not State Mailers) for the June 6, 1989 election.

The Political Scientists

Specialists in Direct Mail Targeting and Designs

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Secondly, I would like to request an opinion from the FPPC as per Government Code Section 83114(a) on the following matter.

These two State Mailer Organizations are intending to produce State Mailers for the June 1990 election. The State Mailers more than likely will support candidates for Assembly and State Senate. Some of these supported Assembly and State Senate candidates will not make a payment to participate in the State Mailer. Is this support of these non-paying candidates by the State Mailer organization considered an "independent expenditure" (as defined by Government Code Section 82031) on behalf of these candidates? If it is considered an independent expenditure, ~~are~~ is the State Mailer Organization required to put an "Independent Expenditure Notice" as defined by Government Code Section 85600 on the State Mailers?

Obviously, I would appreciate hearing from you as soon as practicable regarding these matters. Thank you.

Yours truly,
Fred Huebscher
Fred Huebscher
Treasurer

L.A. Democratic Council and L.A. Taxpayers Alliance



California Fair Political Practices Commission

May 9, 1989

Fred Huebscher
The Political Scientists
1523 No. Vista Street
Los Angeles, CA 90046

Re: No. 89-275

Dear Mr. Huebscher:

We received your letter requesting confirmation of advice under the Political Reform Act on May 8, 1989. Your letter has been assigned to our Technical Assistance and Analysis Division for response. If you have any questions, you may contact directly at (916) 322-5662.

If the letter is appropriate for confirmation without further analysis, we will attempt to expedite our response. A confirming response will be released after it has gone through our approval process. If the letter is not appropriate for this treatment, the staff person assigned to prepare the response will contact you shortly to advise you. In such cases, the normal analysis, review and approval process will be followed.

You should be aware that your letter and our response are public records which may be disclosed to any interested person upon receipt of a proper request for disclosure.

Sincerely,

Kathryn E. Donovan
Kathryn E. Donovan
General Counsel

KED:plh:confadv1

The Political Scientists

Specialists in Direct Mail Targeting and Designs

May 3, 1989 F P P

MAY 8 10 26



Mr. Bruce Brobeck
Fair Political Practices Commission
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Sacramento, CA 95814

Dear Bruce,

I am writing to confirm our discussion of April 26, 1989 regarding the two State Mailer Organizations that I am the Treasurer of. These two organizations, Los Angeles Democratic Council, ID #889012 and Los Angeles Taxpayers Alliance, ID #889000 are producing mailers for the upcoming June 6, 1989 L.A. City election. These mailers will include a maximum of three candidates and no ballot measures.

It is my understanding that these mailers are not considered State Mailers since they do not meet the "State Mailer" definition of Government Code Section 82048.3. Moreover, since the organizations' mailers will only include three candidates, the organizations are not required to put a "State Mailer Identification and Disclaimer" (as outlined in Government Code Section 84305.5) on the mailers. Thank you for your help in this matter.

Yours truly,
Fred Huebscher
Fred Huebscher

The Political Scientists

Specialists in Direct Mail Targeting and Design.

May 5, 1989

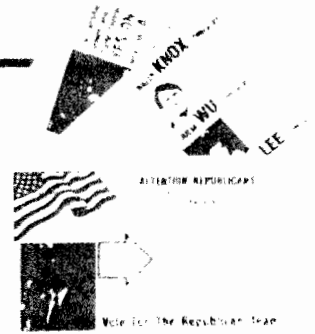
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Obviously, I would appreciate hearing from you as soon as practicable regarding these matters. Thank you.

Yours truly,
Fred Huebscher
Treasurer

L.A. Democratic Council and L.A. Taxpayers Alliance